

Bay Area Air Quality Management District  
939 Ellis Street  
San Francisco, CA 94109  
(415) 749-5000

Board of Directors Regular Meeting  
October 17, 2012

## **APPROVED MINUTES**

### **CALL TO ORDER**

Chairperson John Gioia called the meeting to order at 9:49 a.m.

### **ROLL CALL**

Present: Chairperson John Gioia; Vice Chairperson Ash Kalra; Secretary Nate Miley; and Directors John Avalos, Tom Bates, Susan Garner, Carole Groom, Scott Haggerty, Jennifer Hosterman, David E. Hudson, Carol L. Klatt, Liz Kniss, Eric Mar, Katie Rice, Mark Ross and Brad Wagenknecht.

Absent: Directors Susan Gorin, Edwin M. Lee, Mary Piepho, Jim Spering, Ken Yeager and Shirlee Zane.

### **PLEDGE OF ALLEGIANCE**

Chairperson Gioia led the Pledge of Allegiance.

**PUBLIC COMMENT ON NON-AGENDA MATTERS:** None.

**OPENING COMMENTS:** None.

### **PRESENTATION**

#### **1. Overview of the 2012/2013 Wood Smoke Reduction Program**

Jean Roggenkamp, Deputy Air Pollution Control Officer (DAPCO), gave the staff presentation Overview of the 2012-13 Winter Spare the Air Season, including reasons for wood smoke reduction, background on the wood smoke rule, summary of prior seasons, and reviews of program changes, partnerships with local governments, outreach and advertising efforts, and alert notifications.

Ms. Roggenkamp noted, regarding slide 4, Summary of Prior Winter Spare the Air Seasons, that the number of alerts and excesses vary from year-to-year for a number of reasons, including meteorological conditions.

Ms. Roggenkamp added, regarding slide 5, Program Changes, that more conservative forecasting is an effort to decrease the number of excesses.

NOTED PRESENT: Director Bates was noted present at 9:57 a.m.

Director Wagenknecht asked, regarding slide 7, Outreach, if the door-to-door outreach is done by a walking team. Ms. Roggenkamp responded yes and said staff attends various community events as well.

Ms. Roggenkamp concluded the presentation.

Board Comments:

Chairperson Gioia cited past Board discussion regarding the imposition of fines for first-time violations instead of warning letters, and potential issues that could result due to impediments to public understanding, such as a language barrier, and asked staff to explain the reasoning behind the change. Ms. Roggenkamp said the Air District conducts outreach in a number of languages and the option to attend a Wood Smoke Awareness Course is offered as an alternative to the \$100 fine. Chairperson Gioia asked about the cost of the course. Ms. Roggenkamp said there is no cost. Chairperson Gioia asked for more details. Ms. Roggenkamp said it could be done online or via a packet mailed by the Air District and staff will be working closely with participants. Jack Broadbent, Executive Officer/Air Pollution Control Officer (APCO), said the same approach has been successful in the San Joaquin Valley and Sacramento Metropolitan air districts, where somewhere between 92 and 98% of violators opt for the course over the fine, making it an outreach effort in itself. Mr. Broadbent added that the school will eventually be available in various languages. Ms. Roggenkamp noted the outreach materials provided to the Board as examples of outreach efforts.

Chairperson Gioia asked if the new approach was reviewed by District Counsel and deemed likely to avoid legal challenges. Brian Bunger, District Counsel, responded that concerns about legal challenges were the reason for the warning letter and said the program has existed for long enough that a strong argument can be made that it is widely understood. Mr. Bunger added that the Air District will have to wait and see how the court reacts to arguments from both sides. Chairperson Gioia asked if individuals receive direct notifications of no burn days once they have received a violation. Ms. Roggenkamp said violators are responsible for signing up for notifications but they are informed of the ways by which the notifications can be received. Chairperson Gioia said the Board will continue to monitor this as its effects are felt in different ways in different communities. Mr. Broadbent suggested it be included in the season end review.

Director Groom asked staff to explain the exemptions. Ms. Roggenkamp said the rule allows for some exemptions, such as wood burning as the sole source of home heating, and requested exemptions are confirmed via site visits by staff. Director Groom asked if other exemptions exist. Barbara Coler, Air Quality Program Manager of Compliance & Enforcement, noted that there is a one-time only seasonal exemption in those instances where a heater is broken to provide time for its repair.

Director Ross said San Joaquin Valley must contend with some of the same language barriers and suggested their staff as a good resource for outreach efforts. Director Ross noted the change-out pilot program in Marin County, asked that a similar program be developed for the entire Bay Area, and proposed that penalties for violations either be waived for those that change out or that the penalties be applied against the cost of change-out. Ms. Roggenkamp said staff is looking into the mechanism to enable that approach. Chairperson Gioia noted the pilot program was initially made available in a limited area because of the issues unique to the San Geronimo Valley (Valley). Ms. Roggenkamp

agreed and added that the willingness of Marin County to collaborate with the Air District was also a factor. Mr. Broadbent said the Valley is also unique in that there is no natural gas service.

NOTED PRESENT: Directors Haggerty and Miley were noted present at 10:07 a.m., thereby establishing a quorum.

Director Rice thanked Air District staff for their efforts on the pilot program and noted outreach as an issue for the Valley, not an excuse. Director Rice said the cost of change-out is the biggest barrier but the Air District and County matching resources should help and the course will certainly be helpful over time. Director Rice urged for the expansion of the program should the pilot prove successful.

Director Wagenknecht asked for information relative to additional local ordinances in the future. Ms. Roggenkamp responded that the Air District has adopted a region-wide rule but some areas are more plagued by wood smoke than others and staff work with local governments on ordinances tailored to specific situations, which was the very reason the model ordinance was recently updated. Director Wagenknecht noted the incentives provided in the Valley. Ms. Roggenkamp said the incentives were part of Marin County's response and Air District staff is available to assist any interested local agencies. Lisa Fasano, Director of Communications & Outreach, said the program provides an additional opportunity for outreach and more members of the public will better understand the Air District effort through this continued dialogue.

NOTED PRESENT: Director Kniss was noted present at 10:13 a.m.

Director Hudson echoed Chairperson Gioia's initial comment about communities with limitations, whether economic or linguistic, and added that members of these communities are also concerned about the health of their families and suggested the real issue is one of disclosure. Director Hudson suggested the program provide an opportunity to collaborate with some of the health/community organizations with inroads into these populations and the focus really needs to be on the distribution of information.

Chairperson Gioia suggested some community members could still unintentionally violate the rule despite Air District outreach efforts and urged continued staff consideration.

Director Kalra echoed those comments regarding education being the primary component; said that once members of the San Jose community understood the health significance they were on board with Air District efforts; said with multi-ethnic communities being so common in the Bay Area, the challenge is outreach and thanked staff for their efforts in this regard; and noted the end goal is not punishment but increased awareness.

Public Comments:

Susan Goldsborough, Families for Clean Air, addressed the Board and requested targeted air monitoring by the Air District in the Valley.

NOTED PRESENT: Director Garner was noted present at 10:17 a.m.

Board Action: None; informational only.

## **CONSENT CALENDAR (ITEMS 2 – 5)**

- 2. Minutes of the Board of Directors Special Meeting of September 10, 2012, and Regular Meeting of September 19, 2012;**
- 3. Board Communications Received from September 19, 2012, through October 16, 2012;**
- 4. Air District Personnel on Out-of-State Business Travel from September 1, 2012, through September 30, 2012; and**
- 5. Adoption of Resolution on Notification of Notices of Violations and Settlements.**

### **Board Comments:**

Chairperson Gioia noted the policy change provided by Adoption of Resolution on Notification of Notices of Violations and Settlements in so much as it affects information that will be presented to the Board in the future.

**Public Comments:** None.

**Board Action:** Director Kalra made a motion to approve Consent Calendar Items 2, 3, 4 and 5; Director Hudson seconded; and the motion was unanimously approved without objection.

## **COMMITTEE REPORTS AND RECOMMENDATIONS**

- 6. Report of the Personnel Committee Meeting of July 23, 2012**  
Chairperson B. Wagenknecht

Director Wagenknecht summarized the past discussion and recommendation of the Personnel Committee regarding the proposed adjustment to the benefits of the DAPCO at the meeting of July 23, 2012, and the subsequent discussion by the Board at its meeting on September 19, 2012.

**NOTED PRESENT:** Director Mar was noted present at 10:22 a.m.

### **Board Comments:**

Director Haggerty said the DAPCOs do great work and discussion of this topic does not reflect on their performance and asked when they last received any increase in compensation. Mr. Broadbent responded at least six or seven years, not including cost of living adjustments applied to all staff positions. Director Haggerty confirmed the last increase in DAPCO compensation was at least six or seven years ago, expressed his preference to increase base salary instead of leave time, and explained his seeming change of course on the topic as being indicative of his desire to maintain consistency with his decisions at Alameda County, where employees have not seen a compensation increase in four or five years.

**Public Comments:** None.

**Board Action:** Director Wagenknecht made a motion to adopt the resolution to adjust the management leave for the DAPCO position; Director Hudson seconded; and the motion was unanimously approved without objection.

## **7. Report of the Mobile Source Committee Meeting of September 27, 2012**

Chairperson S. Haggerty

The Committee met on Thursday, September 27, 2012, and approved the minutes of June 28, 2012.

The Committee then received an Update on Plug-In Electric Vehicle (PEV) Programs, including Air District deployment of electric vehicle infrastructure and an overview of the recently completed draft Regional PEV Plan and its elements.

The Committee also considered approval of Transportation Fund for Clean Air (TFCA) Regional Fund policies and evaluation criteria for fiscal year ending (FYE) 2013 and proposed funding allocations for two projects and recommends that the Board of Directors:

1. Approve the proposed FYE 2013 TFCA Regional Fund Policies and Evaluation Criteria presented in Committee Agenda Item 5, Attachment A, as revised by the Committee to include Pilot Shuttle Projects as an eligible product category;
2. Approve an allocation of up to \$4 million in TFCA Regional Funds for shuttle/feeder bus and regional ridesharing projects; and
3. Approve an allocation of up to \$400,000 for electronic bicycle lockers.

The next meeting of the Committee is on Thursday, October 25, 2012, at 9:30 a.m.

Board Comments: None.

Public Comments: None.

Board Action: Director Haggerty made a motion to approve the report of the Mobile Source Committee; Director Ross seconded; and the motion was unanimously approved without objection.

## **PRESENTATION**

### **8. Work Plan for Action Items Related to Accidental Releases from Industrial Facilities**

Mr. Broadbent gave the staff presentation Work Plan – Action Items Related to Accidental Releases from Industrial Facilities, including investigation, procedures, air quality monitoring, rule development, resource needs, community outreach, legislation and timeline.

Mr. Bunger added, regarding slide 8, Legislation, that incidents of this sort generally occur in one 24-hour period and the Air District is restricted to per day penalties, which for strict liability is \$10,000, or \$40,000 to \$100,000 for intentional conduct, and it seems that people in general feel these are inadequate penalties that are in need of review. Mr. Bunger added that the idea is to provide a multiplier for people affected because it is a public nuisance.

Mr. Broadbent concluded the presentation.

### Board Comments:

Chairperson Gioia thanked Air District staff for their work; said the move toward increased ambient air and incident monitoring are both very important from the standpoints of effectively addressing violations and providing public health information to the community; suggested the time is right for legislative action; and clarified the rule development has been underway for some time but the process will be accelerated and additional monitoring requirements will be included. Mr. Broadbent agreed and reported that discussions with refinery staffs have already begun.

Director Ross echoed Chairperson Gioia's comment regarding legislation as the current penalties are far too low; said the message to the public was based on what was available to the Air District at the time and its lack of conformance with County messaging highlights the need to tighten lines of communication; suggested the Air District should amass enough meteorological data to enable plume forecasts during future events; and asked, regarding slide 8, Legislation, what incentives would be provided. Mr. Broadbent said the incentive will be the avoidance of penalties. Mr. Bunger said a number of things incentivize refineries but they are out of the Air District's control. Chairperson Gioia said Contra Costa County and the City of Richmond have industrial safety ordinances that provide some of these incentives and recommendations for amendments to these ordinances are expected to come out of the investigation process. Mr. Broadbent said the Air District fine may be the highest of the involved regulatory agencies.

Director Haggerty commended the Air District's outreach and asked, regarding slide 7, Community Outreach, whether the division is considered under-staffed. Mr. Broadbent echoed Director Haggerty's comment regarding the quality of Air District community outreach efforts; said community members have suggested the Air District consider the addition of a staff member in the role of community advocate and this proposal will be brought back to the Board as a recommendation; and noted the division was somewhat under-staffed as a result of responding to budget challenges.

Director Haggerty asked if the position of Health and Science Officer had been filled. Mr. Broadbent responded that, in consideration of the fiscal constraints, Brian Bateman, former Director of Compliance & Enforcement, was appointed to the position of Health and Science Officer. Director Haggerty suggested the Health and Science Officer is a perfect fit in the role of community advocate and would be well received by the public. Chairperson Gioia noted that 15,000 people went to hospitals in response to the Chevron refinery incident in Richmond and said that providing additional outreach staff would benefit the public. Director Haggerty said County staff is not always well received in situations with a multi-agency response and the Air District's Health and Science Officer would carry a different weight and make a positive difference. Chairperson Gioia agreed and suggested follow up with a committee discussion.

Director Bates confirmed that Mr. Bateman was appointed as the Health and Science Officer and suggested different qualifications should be required for that position. Mr. Broadbent responded that Mr. Bateman holds a Master of Public Health degree from Harvard University. Director Bates shared that Mr. Bateman is a brilliant individual but not a public health officer.

Director Bates said Chevron used a bypass and asked what the maximum fines are for this act. Chairperson Gioia said the Air District did issue a notice of violation but it was not discussed by the Board, hence the new policy adopted today. Director Bates asked what the Air District can do and what the range of responses might be. Mr. Bunger said every penalty can range from zero to \$1

million, depending on the conduct. Director Bates clarified that the maximum is \$1 million. Mr. Bunger confirmed but said it is only applicable in cases of intentional conduct that results in a death and most cases instead fall under strict liability due to a lack of evidence of other conduct and that enhanced penalties are generally only applicable when there is great bodily injury. Director Bates said Chevron recently formed a \$2.5 million independent expenditure advocating for the defeat of California Senator Fran Pavley, author of Assembly Bill 32, and offered this as an example of how the company does business.

Director Garner commended the proposed program and Air District staff's response to the perceived needs that have surfaced since the incident; suggested the development of an enhanced definition of accidental release; asked if air quality monitoring for the entire region could be reviewed by the panel of experts that are expected to convene to review monitoring around refineries; and asked if proactive measures were taken to avoid the incident as oil companies want to avoid accidents generally. Mr. Broadbent speculated that Chevron would say that the incident is not something they planned for or wanted to occur and that they have very rigorous inspections in place. Mr. Broadbent added that the investigation is ongoing, the results will not likely be available until December, and the outcome will be reported to the Stationary Source Committee. Director Garner clarified that these comments are not to say that additional fines are not appropriate, even if the incident is the result of an accident, because the impact on the community was significant, but urged the application of a punitive fine for cases of intentional misconduct and otherwise for accidents. Chairperson Gioia said the Legislative Committee will work with staff to craft the bill with the underlying concept that current penalization options do not provide a wide enough array of options. Mr. Bunger agreed and added that public nuisance events are generally considered strict liability and the penalties are set too low.

Director Hudson asked that the legislative and resources components of the plan not be acted on until more is known about the incident; suggested more discussion on the rule development component; and requested a copy of the Regulatory Concept Paper. Mr. Broadbent agreed to provide it. Director Hudson read an excerpt from the staff report and requested a copy of the "rule adopted in 2005 to minimize emissions from flares at petroleum refineries" before the next meeting of the Legislative Committee. Director Hudson said crafting broader legislation that includes Southern California should be the goal. Chairperson Gioia clarified which committees can expect to see different components of the work plan and asked staff to provide copies of the Regulatory Concept Paper to the Board. Mr. Broadbent agreed to provide copies of the Regulatory Concept Paper and flare management rule to the Board and said his discussions with air districts' representatives in Southern California leads him to believe they would be interested in this legislative proposal provided it is narrowly focused on those incidents discussed today.

Director Rice echoed those comments regarding air quality monitoring, noted the repeated references to the inadequacy of the current monitoring system and to cost as a barrier to its enhancement, and said that cost should never be a barrier because industry should pay the price of ensuring the Air District utilizes the most advanced technology available. Director Rice speculated that continuous monitoring will yield data that will prove useful in the future.

Director Haggerty said Mr. Bateman does great work, suggested that not hiring a Public Health Officer was a deviation from the approved budget, and asked for Board discussion on the topic if that is a concern held by others. Mr. Broadbent asked for an opportunity to report to the appropriate

committee on the matter and acknowledged the comments regarding coordination with health partners within the region. Director Haggerty shared his opinion that information from the Air District is too often skewed by its partners within the region and that their working with an Air District Health and Science Officer will serve to ameliorate that dynamic.

Director Groom echoed the comments regarding air quality monitoring and new, innovative ways to pay for it. Director Groom said the appointment of the Health and Science Officer was discussed in the Budget & Finance Committee and Personnel Committee. She stated her understanding that the current appointment was temporary until such time that the upcoming budget could be examined and that staff did their best given the budget.

Director Haggerty asked if the Public Health Officer was in the budget. Mr. Broadbent said there was one was several years ago and reiterated his request to discuss this further with the appropriate committee. Chairperson Gioia agreed.

#### Public Comments:

Denny Larson, Global Community Monitor, addressed the Board in support and urged the Board to expand air quality monitoring, with a focus on hot spots, mobile capabilities and increased community involvement.

Chairperson Gioia noted that money received from fines currently goes into the Air District general fund and suggested that a more focused use for these dollars may be a good subject for future discussion. Mr. Broadbent said a similar program was in place last year but pulled from this year's budget because of Air District fiscal concerns and agreed to look into reinstating it with the use of penalty monies.

Board Action: Director Bates made a motion to approve the staff Work Plan for completion of action items related to accidental releases at industrial facilities; Director Kniss seconded; and the motion was unanimously approved without objection.

**PUBLIC COMMENT ON NON-AGENDA MATTERS:** None.

#### **OTHER BUSINESS**

##### **9. Report of the Executive Officer/APCO:**

Mr. Broadbent presented a summary of ozone seasons; reported that Governor Brown signed Senate Bill 1339 (Yee), sponsored by the Air District, regarding commute benefits; said the Board meeting agenda on November 7, 2012, will include new regulations for consideration; suggested cancelling the Board meeting on November 21, 2012, and the Mobile Source Committee meeting on November 22, 2012; and noted the Board meeting on December 5, 2012, will tentatively include a tour of a metal-melting facility in conjunction with consideration of a related rule and be conducted in a way similar to the tour of the Lehigh facility.

Chairperson Gioia noted the rising prices of gasoline in California and the Governor allowing the use of winter blends through the end of the month in response and asked if there is any concern about the impacts on air quality. Mr. Broadbent said he discussed the matter with staff at the California Air Resources Board and they agreed that it made sense in light of forecasted meteorological conditions indicating there would not be an impact.

Director Bates said he would be unavailable for much of December so his arranging a facility tour may prove problematic.

**10. Chairperson's Report:**

Chairperson Gioia said the Public Outreach Committee meeting has been rescheduled from Thursday, October 18, 2012, to Wednesday, October 31, 2012, and announced an Executive Committee meeting on Monday, October 22, 2012, Budget & Finance Committee meeting on Wednesday, October 24, 2012, and Mobile Source Committee meeting on Thursday, October 25, 2012.

**11. Time and Place of Next Meeting:** Wednesday, November 7, 2012, Bay Area Air Quality Management District Office, 939 Ellis Street, San Francisco, California 94109 at 9:45 a.m.

**BOARD MEMBERS' COMMENTS:**

Director Bates asked where the Board meetings are broadcast. Mr. Broadbent said via the internet on the Air District website. Director Bates asked if staff can investigate broadcasting on television, as seen with city council meetings and the like. Mr. Broadbent responded that perhaps it can be taken up as part of the move to the new building when new facilities are considered.

Director Ross said he received information that some contractors in the Bay Area are using non-conforming water heaters from Sacramento. Chairperson Gioia said he discussed this with staff prior to the meeting and staff is investigating. Mr. Broadbent said the Air District generally enforces this rule by approaching a manufacturer because they are not allowed to sell non-compliant water heaters in the Bay Area. Chairperson Gioia and Director Ross discussed the possible source and Chairperson Gioia asked for clarification on the regulation. Mr. Bunger said that it is not permissible to sell or install them. Mr. Broadbent speculated that they are being obtained out-of-state as similar rules are in place in Sacramento. Mr. Bunger added that the regulation is common to all of California's air districts and echoed that they are probably being obtained from out-of-state.

Director Groom thanked Jeff McKay, DAPCO, for speaking before the Community Leadership class in San Mateo County and said he was very well received. Chairperson Gioia said the same was true of his presentation before the community meeting in Richmond.

Director Hudson said he received an environmental impact report regarding Roddy Ranch and requested copies of any material in follow up to the matter.

**CLOSED SESSION**

The Board of Directors adjourned to Closed Session at 11:26 a.m.

**12. EXISTING LITIGATION (Government Code Section 54956.9(a))**

Pursuant to Government Code Section 54956.9(a), a need existed for the Board to meet in closed session with legal counsel to consider the following case:

California Building Industry Association v. Bay Area AQMD, Alameda County Superior Court, Case No. RG-10548693; California Court of Appeal, First Appellate District, Case No. A135335.

**OPEN SESSION**

The Board of Directors resumed Open Session at 11:35 a.m. with no reportable action.

**13. Adjournment:** The Board of Directors meeting adjourned at 11:36 a.m.

*/s/ Sean Gallagher*

Sean Gallagher  
Clerk of the Boards